IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.740 OF 2002

1. Baban @ Bhal Prakash Ghanvat)
age 27 years, Occupation - Nil)
R/at - Chaskaman, Ghanvatwadi,)
Tal: Khed, Distt. Pune)
(At present lodged at Y.C.P.)
Pune.)
)
2. Suresh @ Shiva Vitthal)
Talekar, Age 30 years,)
Occupation - Nil. R/at Buttewadi)
Tal - Khed. Dist. Pune.) Appellants
(At present Lodged at Y.C.P.)(Original accused
Pune) Nos. 1 and 2)

V/s

The State of Maharashtra)
(Through Khadki Police Stn.)
Pune)) Respondent.

ALONG WITH
CRIMINAL APPEAL NO.580 OF 2002

Shri Jaydras Ramdas Butte)
aged 21 years, Occ. Agri.,)
residing at Buttewadi Road,)
Pangari, Karvasti, Tal. Khed,)
District - Pune.)
(At present detained at Yerwada)
Central Prison, Pune.)..Appellant.
(Original accused
No.3)

V/s

State of Maharashtra)
(at the instance of Khadki)
Police Station, Khadki) ...Respondent.

Mr. Abhyankar Apte for the appellants in both the above appeals.

Mr. A.P. Shringarpure, APP for the respondent in both the above appeals.

CORAM: V.M.KANADE,J.

DATE: 15TH SEPTEMBER, 2004.

ORAL JUDGMENT:

1. Appellants in both the above appeals challenge the judgment and Order dated 9/5/2002 passed by the VI Additional Sessions Judge, Pune in Sessions case No.457 of 1999. Both the above appeals are being disposed of by this common judgment.

2. The accused were charged under sections 354, 392, 397 read with section 34 of the Indian Penal Code.

3. The case of the prosecution is that the complainant and his wife had gone to the house of one Balasaheb Deshmukh as guests at Khadki, Pune. On 4/11/1998 when they were standing at the Bus Stop, at about 8.20 p.m., Armada Jeep came and stopped near the Bus Stop. One of the occupants asked them where he was going. When the complainant informed them that he was going to Rajgurunagar, the occupants of the jeep agreed to drop him and his wife at Rajgurunagar. Prosecution's case is that when the Jeep was near Alandi, occupants of the Jeep asked his wife to remove her ornaments and also cash which was in the pocket of the complainant. They, thereafter, took away his wife

in jeep. However, on the next day, they asked the complainant's wife to get down near Katraj Bus Stop and gave her Rs 70/- and, thereafter, she returned home. A complaint was lodged. Trial Court convicted the accused and sentenced them to suffer R.I. for 7 years.

4. The learned Counsel appearing on behalf of the appellants submitted that the accused are in jail for about 5 years and 11 months. He submitted that so far as the conviction under section 397 is concerned, the prosecution has not proved that accused persons had committed robbery and had caused grievous injury to the victim. The learned Counsel appearing on behalf of the appellants has taken me through the evidence of P.W.1 - the complainant and his wife i.e. P.W.2. P.W.1 has not stated that the accused was carrying a knife whereas P.W.2, his wife, has stated the she was asked to remove her ornaments at the point of knife. He submitted that the knife was not recovered at the instance of the accused. He further submitted that no grievous injury was caused to the complainant and his wife. It is submitted that, therefore the prosecution has not proved that the accused had committed offence under section 397. In support of the said submission, he relied upon the Division Bench Judgment of this

Court in the case of **Shravan Dashrath Datrange Vs. State of Maharashtra,** reported in **1998 CRI.L.J.1196.** The Division Bench in paras 15 and 16 of the said Judgment, after relying on the judgment of the Apex Court, reduces the sentence by convicting the accused under section 394 of the I.P.C. In the present case also, the complainant and his wife were not injured in the incident. The knife was not recovered at the instance of the accused. Appellants did not take any advantage of the wife of the complainant and she returned home safely and it is not alleged by her that they had raped her or molested her. The accused Nos. 1 and 3 were 24 and 23 years of age respectively. Under the circumstances, the offence under section 397 is not proved. However, both the witnesses have identified the accused and they have stated that the ornaments from the person of the wife was removed. Though there is some discrepancy regarding recovery of gold ornament yet the fact of robbery has been proved by the complainant and his wife. Under these circumstances, the conviction is altered. Sentence is reduced from 7 years to one which the accused have already undergone. The ratio of the judgment of the Division Bench is, therefore, squarely applicable to the facts of the present case. In the result, the following order is passed:-

O R D E R

. The conviction is altered from section 397 to section 392 I.P.C. Sentence is reduced from 7 years to the one which the accused have already undergone.

. Accused to be released forthwith, unless they are otherwise required in any other case.

. Both the appeals are partly allowed in the above terms.

V.M. KANADE, J.